

JS 44 (Rev. 12/07) (and rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

JOSEPH C. MONTANA JR.

DEFENDANTS

KIM MOSES; HERITAGE AUCTIONS, INC.; DOES 1-25

(b) County of Residence of First Listed Plaintiff CONTRA COSTA
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant LOS ANGELES
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

ROBERT L. MEZZETTI II
31 EAST JULIAN ST.
SAN JOSE, CA 95112

Attorneys (If Known)

ADH
E-FILING C08 02324BZ

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
			SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS1 (405(g))	
			FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus—Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Recopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332

Brief description of cause:

INVASION OF PRIVACY AND RELATED CLAIMS

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$ exceeds 75,000

CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

☒ SAN FRANCISCO/OAKLAND ☐ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

5/15/2008

Robert L. Mezzetti II

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

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I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

1 **ROBERT L. MEZZETTI II, 114282**
2 **CAITLIN G. WHITWELL, 238013**
3 **MEZZETTI LAW FIRM, INC.**
31 East Julian Street
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(408) 279-8400

4 Attorneys for Plaintiff
5 **JOSEPH C. MONTANA JR.**

ADR

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RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

E-FILING

6
7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9 SAN JOSE DIVISION

C08 02324

BZ

10 *CBZ*
11
12 **JOSEPH C. MONTANA, JR.**

13 Plaintiff,

14 v.

15 **KIM MOSES, HERITAGE AUCTION, INC.,**
16 and DOES 1 through 25 inclusive,

17 Defendants.

Case No.

PLAINTIFF'S COMPLAINT FOR DAMAGES
AND INJUNCTION FOR

- (1) INVASION OF PRIVACY- PUBLICITY
GIVEN TO PRIVATE LIFE
(2) INVASION OF PRIVACY-
INTERFERENCE WITH PRIVACY
(3) COMMON LAW COPYRIGHT
VIOLATION-CAL. CIV. C. §§ 980-985
(4) CONVERSION

DEMAND FOR JURY TRIAL

18
19
20
21 Plaintiff JOSEPH C. MONTANA, JR., alleges:

22 **JURISDICTION**

23 This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because, as alleged below, there
24 is diversity of the parties as Plaintiff is a California resident and Defendant HERITAGE
25 AUCTIONS, INC., is a Texas corporation, and the amount in controversy exceeds \$75,000.

INTRADISTRICT ASSIGNMENT

Pursuant to Civil Local Rule 3-2(b), this action is properly commenced at any office of the Clerk for the Northern District, and thereafter assigned to the San Francisco or Oakland Division pursuant to Civil Local Rule 3-2(c), as a substantial part of the property that is the subject of the action is situated in Contra Costa County where Plaintiff resides, as alleged below.

GENERAL ALLEGATIONS

1. Plaintiff JOSEPH C. MONTANA, JR., is an individual and an adult resident of Contra Costa County, California.

2. Defendant KIM MOSES aka KIM MOSES SANDER is an individual and an adult resident of Los Angeles County, California.

3. Defendant HERITAGE AUCTIONS, INC., is a Texas corporation with its principal place of business in Texas; HERITAGE AUCTION is engaged in the business of marketing, valuing, and selling collectibles at auctions, which are held in Texas and California, among other states, and which target California residents, among residents of other states.

4. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as DOES 1 through 25, inclusive, and therefore sues such Defendants by such fictitious names. Plaintiff will seek leave to amend this Complaint to reflect the true names and capacities of said Defendants when such information has been ascertained. Plaintiff is informed and believes and thereon allege that each of these fictitiously named Defendants claims some right, title, estate, lien, or interest in the hereinafter described claims, and that each of them is responsible in some manner for the wrongful conduct herein alleged.

5. Defendants, and each of them, were the agents, employees, co-ventures, partners, or in some manner agents or principals, or both, for each other, and were acting in the scope of their agency or conduct.

6. In approximately April 2008 and May 2008, Defendants offered for auction certain items in which Plaintiff has an interest; those items include, but are not limited to, HERITAGE AUCTION lot numbers 19855, 19857, 19858, 19859, 19860, and 19866.

1 7. On approximately May 3, 2008, Defendants offered those items for sale to the public
2 notwithstanding notice of Plaintiff's objection thereto.

3 8. As a direct and proximate result of Defendants' conduct, Plaintiff has sustained
4 damages in an amount on excess of \$75,000; these damages were sustained in Contra Costa
5 County, where Plaintiff resides.

6 9. As a further direct and proximate result of Defendants' conduct, Plaintiff has
7 sustained, and is continuing to sustain, irreparable injury for which pecuniary compensation would
8 not afford adequate relief, and/or where it would be extremely difficult to ascertain the amount of
9 compensation which would afford adequate relief, and/or where restraint is necessary to prevent
10 a multiplicity of judicial proceedings.

11 **FIRST CAUSE OF ACTION**
12 **(Invasion of Privacy–Publicity Given to Private Life)**

13 10. Plaintiff incorporates by this reference the all preceding paragraphs as though fully
14 set forth herein.

15 11. On or about April 2008 and May 2008, Defendants gave publicity to matters
16 concerning the private life of Plaintiff by offering Plaintiff's personal effects at auction to the public
17 at large, and/or to so many persons that the matters were substantially certain to become public
18 knowledge.

19 12. The matters to which Defendants gave publicity were of a nature that would be
20 highly offensive to a reasonable person, and were, in fact, highly offensive to Plaintiff.

21 13. The matters to which Defendants gave publicity were not of legitimate public
22 concern, nor were they matters of public record.

23 14. At no time did Plaintiff consent to the publicity given to his personal effects, nor did
24 Plaintiff manifest any desire to have those personal effects and their contents made public.

25 15. As a direct and proximate result of Defendants' conduct, Plaintiff has sustained
26 damages in excess of \$75,000.

27 WHEREFORE, Plaintiff demands a jury trial and prays for Judgment as set forth below.
28

SECOND CAUSE OF ACTION
(Invasion of Privacy–Interference with Privacy)

16. Plaintiff incorporates by this reference the all preceding paragraphs as though fully set forth herein.

17. At all relevant times, Plaintiff had an interest in not having his affairs known to others, in not having his likeness exhibited to the public, and in protecting his reputation.

18. In approximately April 2008 through May 2008, Defendants unreasonably and seriously interfered with Plaintiff's interest in that they caused to be posted on the internet several of Plaintiff's personal effects.

19. At all relevant times, Defendants knew or should have known that their conduct would be offensive to a person of ordinary sensibilities.

20. At no time did Plaintiff consent to Defendants' conduct, nor did Plaintiff manifest any desire to have those personal effects and their contents made public.

21. As a direct and proximate result of Defendants' conduct, Plaintiff has sustained damages in excess of \$75,000.

WHEREFORE, Plaintiff demands a jury trial and prays for Judgment as set forth below.

THIRD CAUSE OF ACTION
(Common Law Copyright Violation – Cal. Civ. C. §§ 980-985)

22. Plaintiff incorporates by this reference the all preceding paragraphs as though fully set forth herein.

23. At all relevant times, Plaintiff had a right to publish or to prevent from publication his private correspondence.

24. In approximately April 2008 through May 2008, Defendants violated Plaintiff's right in that they published and/or caused to be published Plaintiff's private correspondence.

25. At no time did Plaintiff consent to Defendants' conduct, nor did Plaintiff manifest any desire to have those personal effects and their contents made public.

26. As a direct and proximate result of Defendant's conduct, Plaintiff has sustained damages in excess of \$75,000.

1 WHEREFORE, Plaintiff demands a jury trial and prays for Judgment as set forth below.

2 **FOURTH CAUSE OF ACTION**
3 **(Conversion—as against Defendant MOSES)**

4 27. Plaintiff incorporates by this reference the all preceding paragraphs as though fully
5 set forth herein.

6 28. At all relevant times, Plaintiff had an ownership interest in his own personal effects
7 including, but not limited to, his literary property and personal property including, but not limited
8 to, his University of Notre Dame letter of intent and student identification card.

9 29. On a date unknown to Plaintiff but estimated between December 1979 and the
10 present, Defendant obtained from Plaintiff, without Plaintiff's consent, the personal property
11 described as follows: his literary property and personal property including, but not limited to, his
12 University of Notre Dame letter of intent and student identification card. That property has a value
13 in excess of \$75,000.

14 30. Because of fraudulent or mistaken concealment, the facts of Defendant's conduct
15 were unknown to Plaintiff until approximately April 29, 2008.

16 31. On approximately April 29, 2008, Plaintiff learned of Defendant's conduct and
17 demanded return of his property, but Defendant refused, and continues to refuse, to do so;
18 Defendant has converted Plaintiff's personal property to Defendant's own use and benefit.

19 32. By reason of Defendants' unlawful conversion of Plaintiff's personal property,
20 Plaintiff is entitled to recover the value of the property at the time of the conversion, with interest,
21 and a fair compensation for the time and money properly expended to recover the property,
22 pursuant to Cal. Civ. C. § 3336.

23 33. Defendants' conduct was wilful, wanton, oppressive, malicious, and/or done in
24 conscious disregard of Plaintiff's rights; Plaintiff seeks exemplary damages according to proof
25 pursuant to Cal. Civ. C. § 3294.

26 WHEREFORE, Plaintiff demands a jury trial and prays for Judgment as set forth below.
27
28

PRAYER FOR JUDGMENT


WHEREFORE, Plaintiff demands a jury trial and prays for Judgment as follows:

- (1) For special damages in excess of \$75,000;
- (2) For punitive damages according to proof pursuant to Cal. Civ. C. § 3294;
- (3) For interest on damages pursuant to Cal. Civ. C. §§ 3287-3291, 3336, and any other applicable law;
- (4) Damages, including attorneys' fees, for attempting to retain possession of the personal property in an amount in excess of \$75,000 pursuant to Cal. Civ. C. §3336;
- (5) For a provisional and permanent injunction pursuant to Cal. Civ. C. §§ 526, 3422, 1812.602 and any other applicable law;
- (6) For costs of suit herein incurred;
- (7) For such other and further relief as this Court may deem proper.

DATED: May 5, 2008

MEZZETTI LAW FIRM, INC.

BY


ROBERT L. MEZZETTI II